VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.01-2, 8.01-68, 11-9.1, 13.1-506, 13.1-562, 14.1-112 as it is currently effective and as it may become effective, 18.2-308, 18.2-308.1:2, 24.2-232, 26-6, 26-17.4, 26-30, 26-50, 26-59, 37.1-67.3, 37.1-89, 37.1-109, 37.1-144, 46.2-400, 54.1-2976, 58.1-3015, 63.1-55.6, 63.1-107 and 65.2-525 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 4 of Title 37.1 an article numbered 1.1, consisting of sections numbered 37.1-134.6 through 37.1-134.22, and by adding sections numbered 37.1-137.1 through 37.1-137.5, and to repeal Article 1 (§§ 37.1-128.01 through 37.1-134.5) of Chapter 4 of Title 37.1 and §§ 37.1-135, 37.1-138, 37.1-142 and 37.1-145 of the Code of Virginia, relating to incapacity; appointment, duties and liabilities of guardians and conservators.

[S 408]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-2, 8.01-68, 11-9.1, 13.1-506, 13.1-562, 14.1-112 as it is currently effective and as it may become effective, 18.2-308, 18.2-308.1:2, 24.2-232, 26-6, 26-17.4, 26-30, 26-50, 26-59, 37.1-67.3, 37.1-89, 37.1-109, 37.1-144, 46.2-400, 54.1-2976, 58.1-3015, 63.1-55.6, 63.1-107 and 65.2-525 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 4 of Title 37.1 an article numbered 1.1, consisting of sections numbered 37.1-134.6 through 37.1-134.22, and by adding sections numbered 37.1-137.1 through 37.1-137.5 as follows:

§ 8.01-2. General definitions for this title.

As used in this title, unless the context otherwise requires, the term:

1. "Action" and "suit" may be used interchangeably and shall include all civil proceedings whether at law, in equity, or statutory in nature and whether in circuit courts or district courts;

2. "Decree" and "judgment" may be used interchangeably and shall include orders or awards;

3. "Fiduciary" shall include any one or more of the following:

a. guardian,

b. committee,

c. trustee,

d. executor,

e. administrator, and administrator with the will annexed, ~~or~~

f. curator of the will of any decedent~~;~~*, or*

g. conservator;

4. "Rendition of a judgment" means the time at which the judgment is signed and dated;

5. "Person" shall include individuals, a trust, an estate, a partnership, an association, an order, a corporation, or any other legal or commercial entity;

6. "Person under a disability" shall include:

a. a person convicted of a felony during the period he is confined;

b. an infant;

~~c. a "mentally retarded" or "mentally ill" person as defined in § 37.1-1;~~

~~d.~~ *c.* a drug addict or an alcoholic as defined in § 37.1-1;

~~e. a person of advanced age or impaired health under § 37.1-132~~;

~~f. a person adjudged "legally incompetent" pursuant to § 37.1-128.02~~

d. an incapacitated person as defined in § 37.1-134.6;

~~g.~~ *e.* an ~~incompetent~~ *incapacitated* ex-service person under § ~~37.1-134~~ *37.1-134.20*; or

~~h.~~ *f.* any other person who, upon motion to the court by any party to an action or suit or by any person in interest, is determined to be (i) incapable of taking proper care of his person, or (ii) incapable of properly handling and managing his estate, or (iii) otherwise unable to defend his property or legal rights either because of age or temporary or permanent impairment, whether physical, mental, or both;

7. "Sheriff" shall include deputy sheriffs and such other persons designated in §§ 15.1-48 and 15.1-77;

8. "Summons" and "subpoena" may be used interchangeably and shall include a subpoena duces tecum for the production of documents and tangible things.

§ 8.01-68. Jurisdiction.

Circuit courts in the exercise of their equity jurisdiction, upon being satisfied by competent evidence independent of the admissions in the pleadings or elsewhere in the proceedings, that one or more of the types of relief hereinafter specified will promote the interest of an owner of land, or any interest therein,

who is a person under a disability as defined in this chapter *for whom a conservator has not been appointed pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1*, and taking into consideration the rights of any other party interested in such land, may order the sale, exchange, lease, encumbrance, redemption, or other disposition of such real estate as to the court may seem just and equitable.

In the case of the sales of such lands or interest therein, the court shall be governed by the established practices for judicial sales generally except as they may be specifically modified by provisions of this article.

§ 11-9.1. When power of attorney, etc., not terminated by principal's disability; exception.

Whenever any power of attorney or other writing, in which any principal shall vest any power or authority in an attorney-in-fact or other agent, shall contain the words "This power of attorney (or his authority) shall not terminate on disability of the principal" or other words showing the intent of the principal that such power or authority shall not terminate upon his disability, then all power and authority vested in the attorney-in-fact or agent by the power of attorney or other writing shall continue and be exercisable by the attorney-in-fact or agent on behalf of the principal notwithstanding any subsequent disability, incompetence, or incapacity of the principal at law. All acts done by the attorney-in-fact or agent, pursuant to such power or authority, during the period of any such disability, incompetence or incapacity, shall have in all respects the same effect and shall inure to the benefit of, and bind the principal as fully as if the principal were not subject to such disability, incompetence or incapacity. If any ~~guardian~~ *conservator* or committee shall thereafter be appointed for the principal, the attorney-in-fact or agent shall, during the continuance of such appointment, account to such ~~guardian~~ *conservator* or committee as he would otherwise be obligated to account to the principal.

The appointment of a ~~guardian~~ *conservator* or committee pursuant to Title 37.1 shall not of itself revoke or limit the authority of the attorney-in-fact or other agent. However, in a proceeding in which the attorney-in-fact or other agent is made a party, the court which appointed the ~~guardian~~ *conservator* or committee may revoke, suspend, or otherwise limit such authority. Furthermore, where no ~~guardian~~ *conservator* or committee has been appointed, the circuit court of the city or county where the principal resides or is located, in a proceeding brought by a person interested in the welfare of the principal as defined in § 37.1-132.1, and in which the attorney-in-fact or other agent and the principal are made parties, may terminate, suspend, or otherwise limit the authority of the attorney-in-fact or other agent upon a finding that such termination, suspension or limitation is in the best interests of the principal or his estate.

§ 13.1-506. Revocation of registration.

The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the registration of a broker-dealer, investment advisor, investment advisor representative or agent, or refuse to renew a registration if an application for renewal has been or is to be filed, if it finds that such an order is in the public interest and that such broker-dealer, investment advisor or any partner, officer or director of such broker-dealer or investment advisor, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by such broker-dealer or investment advisor or that such agent or investment advisor representative:

1. Has engaged in any fraudulent transaction;

2. Is insolvent, or in danger of becoming insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

3. ~~Has been adjudicated mentally incompetent or~~ Is a person for whom a ~~committee~~ *conservator* or guardian has been appointed and is acting;

4. Has been convicted, within or without this Commonwealth, of any misdemeanor involving a security or any aspect of the securities or investment advisory business or any felony;

5. Has failed to furnish information or records requested by the Commission concerning his conduct of the securities or investment advisory business; or

6. [Repealed.]

7. Has failed to conduct his securities or investment advisory business in accordance with the rules of the Commission.

§ 13.1-562. Revocation of or refusal to renew registration.

A. The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the effectiveness of a franchise registration (or refuse to renew a registration if an application for renewal has been or is to be filed) if it finds that such an order is in the public interest or that the franchisor or any controlling person of the franchisor:

(1) Has engaged in any fraudulent transaction;

(2) Is insolvent, or in danger of becoming insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

(3) ~~Has been adjudicated mentally incompetent or~~ Is a person for whom a ~~committee~~ *conservator* or guardian has been appointed and is acting;

(4) Has been convicted, within or without this Commonwealth, of any misdemeanor involving a franchise, or any felony;

(5) Has failed to furnish information requested by the Commission concerning the conduct of his business; or

(6) Has violated any of the provisions of this chapter.

B. If it appears to the Commission that it is in the public interest and that there exists one or more of the grounds enumerated in subdivisions (1) through (6) of subsection A of this section, the Commission may so notify the franchisor. The franchisor shall have seven business days from the date of the written notice from the Commission within which to file a written response to the matters addressed in the notice. If (i) the Commission notified, or reasonably attempted to notify, the franchisor in writing, (ii) it appears to be in the public interest, and (iii) either the Commission, after consideration of the franchisor's response, reasonably believes the ground or grounds exist or a response is not filed in a timely manner, the Commission may summarily enter an order suspending the effectiveness of the franchisor's registration pending final determination of any proceeding under this section. The Commission shall promptly send a copy of the suspension order to the franchisor and each of its subfranchisors, if any are known to the Commission. At a minimum, the order shall set forth the basis for the suspension as well as the franchisor's or subfranchisor's right to file a written request for a hearing within twenty-one days after the date of entry of the order. If a hearing is requested in a timely manner, the Commission, after notice and an opportunity for a hearing as soon as practicable, may modify or vacate the suspension order or continue it in effect until final determination of the proceeding under this section. If a hearing is not requested in a timely manner, the suspension order shall remain in effect until it is modified or vacated by the Commission.

§ 14.1-112. Clerks of circuit courts; generally.

A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

(1) When a writing is admitted to record under Chapter 2 (§ 17-33 et seq.) of Title 17, or Chapter 5 (§ 55-80 et seq.) or Chapter 6 (§ 55-106 et seq.) of Title 55, for everything relating to it, except the recording in the proper book; for receiving proof of acknowledgments, entering orders, endorsing clerk's certificate, and when required, embracing it in a list for the commissioner of the revenue, one dollar.

(2) For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, thirteen dollars, including the fee of one dollar set forth in subdivision (1) for up to four pages and one dollar for each page over four pages, and for recording plats too large to be recorded in the deed books, and for each sheet thereof, thirteen dollars. This fee shall be in addition to the fee for recording a deed or other instrument recorded in conjunction with such plat sheet or sheets including the fee of one dollar set forth in subdivision (1). Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. In addition, a fee of one dollar shall be charged for indexing any document for each name indexed exceeding a total of ten in number. One dollar of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

(3) [Repealed.]

(4) For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, twenty dollars for estates not exceeding $50,000, twenty-five dollars for estates not exceeding $100,000 and thirty dollars for estates exceeding $100,000. No fee shall be charged for estates of $5,000 or less.

(5) For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, ten dollars.

(6) For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, ten dollars.

(7) For making out any bond, other than those under § 14.1-90 or subdivision (5) of this section, administering all necessary oaths and writing proper affidavits, three dollars.

(8) For issuing any execution, and recording the return thereof, $1.50 and for all services rendered by the clerk in any garnishment or attachment proceeding the clerk's fee shall be fifteen dollars in cases not exceeding $500 and twenty-five dollars in all other cases.

(9) [Repealed.]

(10) For making out a copy of any paper or record to go out of the office, which is not otherwise specifically provided for, a fee of fifty cents for each page. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

(11) For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge two dollars and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional fifty cents.

(12) through (14) [Repealed.]

(15) Upon conviction in felony cases or when a felony defendant's suspension of sentence and probation is revoked pursuant to § 19.2-306, other than a revocation for failure to pay prior court costs, the clerk shall charge the defendant thirty-five dollars in each case.

In addition, in each case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess (i) a fee of $100 for each felony conviction and each felony disposition under § 18.2-251 and (ii) a fee of $100 per case for any forensic laboratory analysis performed for use in prosecution of such violation. Such fees shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury.

In addition, in all felony cases, including the revocation of suspension of sentence and probation held pursuant to § 19.2-306, other than a revocation for failure to pay prior court costs, the clerk shall collect and tax as costs (i) the expense of reporting or recording the trial or hearing in an amount equal to the per diem charges of the reporter or reasonable charge attributable to the cost of operating the mechanical or electronic devices in accordance with § 19.2-165, (ii) a fee of two dollars and fifty cents per charge, (iii) the fees of the attorney for the Commonwealth as provided for in § 14.1-121, (iv) the compensation of court-appointed counsel as provided in § 19.2-163, (v) the fees of the public defenders as provided for in § 19.2-163.2, (vi) the additional costs per charge imposed under § 19.2-368.18 to be deposited into the Criminal Injuries Compensation Fund, and (vii) in any court of record in which electronic devices are used for the purpose of recording testimony, a sum not to exceed twenty dollars for each day or part of a day of the trial to be paid by the clerk into a special fund to be used for the purpose of repairing, replacing or supplementing such electronic devices, or if a sufficient amount is available, to pay the purchase price of such devices in whole or in part. For the purpose of this subdivision, repairing shall include maintenance or service contracts.

(16) Upon conviction in misdemeanor cases, the clerk shall charge the defendant twenty-five dollars in each case. Sums shall be collected for and paid to the benefit of the Virginia Crime Victim-Witness Fund as provided for in § 19.2-11.3 irrespective of whether the defendant was convicted of a misdemeanor chargeable under the Code of Virginia or pursuant to a local ordinance.

In addition, in each case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess (i) a fee of fifty dollars for each misdemeanor conviction and (ii) a fee of $100 per case for any forensic laboratory analysis performed for use in prosecution of such violation. Such fees shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury.

In addition, for each misdemeanor case the clerk shall collect and tax as costs (i) the fees of the attorneys for the Commonwealth as provided for in § 14.1-121, (ii) the compensation of court-appointed counsel as provided in § 19.2-163, (iii) the fees of the public defenders as provided for in § 19.2-163.2, (iv) the additional costs imposed under § 19.2-368.18 to be deposited into the Criminal Injuries Compensation Fund, and (v) in any court in which electronic devices are used for the purpose of recording testimony, a sum not to exceed five dollars for each day or part of a day of the trial to be paid by the clerk into a special fund to be used for the purpose of repairing, replacing or supplementing such electronic devices, or if a sufficient amount is available, to pay the purchase price of such devices in whole or in part. For the purpose of this subdivision, repairing shall include maintenance or service contracts.

(16a) Upon the defendant's being required to successfully complete traffic school or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

(17) In all actions at law the clerk's fee chargeable to the plaintiff shall be fifty dollars in cases not exceeding $50,000, $100 in cases not exceeding $100,000, and $150 in cases exceeding $100,000; and in condemnation cases, a fee of twenty-five dollars, to be paid by the plaintiff at the time of instituting the action, this fee to be in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

(17a) In addition to the fees chargeable for actions at law, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail, (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment, (iii) for the sheriff for serving each copy of the order entering judgment, one dollar and twenty-five cents, and (iv) for docketing the judgment and issuing executions

thereon, the same fees as prescribed in subdivision (22) of this section.

(18) [Repealed.]

(19) For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, ten dollars.

(20) For each habeas corpus proceeding, the clerk shall receive ten dollars for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

(21) [Repealed.]

(22) For docketing and indexing a judgment from any other court of this Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of five dollars; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of five dollars; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of twenty dollars.

(23) For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge ten dollars, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

(24) For receiving and processing an application for a tax deed, ten dollars.

(25) For all services rendered by the clerk in any condemnation proceeding instituted by the Commonwealth, twenty-five dollars.

(26) , (27) [Repealed.]

(28) For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, one dollar.

(29) For all services rendered by the clerk in any proceeding pursuant to § 57-8 or § 57-15, ten dollars.

(30) For preparation and issuance of a subpoena duces tecum or a summons for interrogation by an execution creditor, five dollars.

(31) For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, twenty dollars; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

(32) For providing court records or documents on microfilm, per frame, ten cents.

(33) In all chancery causes, the clerk's fee chargeable to the plaintiff shall be fifty dollars to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. However, no fee shall be charged for the filing of a cross-bill in any pending suit. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

(34) For the acceptance of credit cards in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs in accordance with § 19.2-353.3, the clerk shall collect a service charge of four percent of the amount paid.

(35) For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of twenty dollars or ten percent of the amount to be paid, whichever is greater, in accordance with § 19.2-353.3.

(36) For all services rendered in an adoption proceeding, a fee of twenty dollars, in addition to the fee imposed under § 63.1-236.1, to be paid by the petitioner or petitioners.

(37) For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

(38) For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of five dollars to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

(39) For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, a fee of twenty dollars.

(40) For issuance of hunting and trapping permits in accordance with § 10.1-1154, twenty-five cents.

(41) For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees shall be as prescribed in that Act.

(42) [Repealed.]

(43) For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55-218.1, a fee of one dollar.

(44) For filing power of attorney for service of process, or resignation or revocation thereof, in accordance with § 59.1-71, a fee of twenty-five cents.

(45) For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of ten dollars.

(46) For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

(47) For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of two dollars.

(48) For filing a financing statement in accordance with § 8.9-403, the fee shall be as prescribed under that section.

(49) For filing a termination statement in accordance with § 8.9-404, the fee shall be as prescribed under that section.

(50) For filing assignment of security interest in accordance with § 8.9-405, the fee shall be as prescribed under that section.

(51) For filing a petition as provided in §§ 37.1-134.7 and 37.1-134.17, the fee shall be ten dollars.

In accordance with § 14.1-133.2, the clerk shall collect fees under subdivisions (8), (15), (16), (17), (20), (23) if applicable, (25), (29), (31), (33), (36), and (38) to be designated for courthouse construction, renovation or maintenance.

In accordance with § 14.1-125.1, the clerk shall collect fees under subdivisions (8), (17), (20), (23) if applicable, (25), (29), (31), (33), (36), and (38) to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

In accordance with § 14.1-133.3, the clerk shall collect fees under subdivisions (15) and (16) to be designated for the Intensified Drug Enforcement Jurisdiction Fund.

In accordance with § 42.1-70, the clerk shall collect fees under subdivisions (8), (17), (20), (23) if applicable, (25), (29), (31), (33), (36), and (38) to be designated for public law libraries.

The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ 14.1-112. (Delayed effective date) Clerks of circuit courts; generally.

A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

(1) When a writing is admitted to record under Chapter 2 (§ 17-33 et seq.) of Title 17, or Chapter 5 (§ 55-80 et seq.) or Chapter 6 (§ 55-106 et seq.) of Title 55, for everything relating to it, except the recording in the proper book; for receiving proof of acknowledgments, entering orders, endorsing clerk's certificate, and when required, embracing it in a list for the commissioner of the revenue, one dollar.

(2) For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, thirteen dollars, including the fee of one dollar set forth in subdivision (1) for up to four pages and one dollar for each page over four pages, and for recording plats too large to be recorded in the deed books, and for each sheet thereof, thirteen dollars. This fee shall be in addition to the fee for recording a deed or other instrument recorded in conjunction with such plat sheet or sheets including the fee of one dollar set forth in subdivision (1). Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. In addition, a fee of one dollar shall be charged for indexing any document for each name indexed exceeding a total of ten in number. One dollar of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

(3) [Repealed.]

(4) For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, twenty dollars for estates not exceeding $50,000, twenty-five dollars for estates not exceeding $100,000 and thirty dollars for estates exceeding $100,000. No fee shall be charged for estates of $5,000 or less.

(5) For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, ten dollars.

(6) For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, ten dollars.

(7) For making out any bond, other than those under § 14.1-90 or subdivision (5) of this section, administering all necessary oaths and writing proper affidavits, three dollars.

(8) For issuing any execution, and recording the return thereof, $1.50 and for all services rendered by the clerk in any garnishment or attachment proceeding the clerk's fee shall be fifteen dollars in cases not exceeding $500 and twenty-five dollars in all other cases.

(9) [Repealed.]

(10) For making out a copy of any paper or record to go out of the office, which is not otherwise

specifically provided for, a fee of fifty cents for each page. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

(11) For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge two dollars, and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional fifty cents.

(12) through (14) [Repealed.]

(15) Upon conviction in felony cases or when a felony defendant's suspension of sentence and probation is revoked pursuant to § 19.2-306, other than a revocation for failure to pay prior court costs, the clerk shall charge the defendant thirty-five dollars in each case.

In addition, in each case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess (i) a fee of $100 for each felony conviction and each felony disposition under § 18.2-251, and (ii) a fee of $100 per case for any forensic laboratory analysis performed for use in prosecution of such violation. Such fees shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury.

In addition, in all felony cases, including the revocation of suspension of sentence and probation held pursuant to § 19.2-306, other than a revocation for failure to pay prior court costs, the clerk shall collect and tax as costs (i) the expense of reporting or recording the trial or hearing in an amount equal to the per diem charges of the reporter or reasonable charge attributable to the cost of operating the mechanical or electronic devices in accordance with § 19.2-165, (ii) a fee of two dollars and fifty cents per charge, (iii) the fees of the attorney for the Commonwealth as provided for in § 14.1-121, (iv) the compensation of court-appointed counsel as provided in § 19.2-163, (v) the fees of the public defenders as provided for in § 19.2-163.2, (vi) the additional costs per charge imposed under § 19.2-368.18 to be deposited into the Criminal Injuries Compensation Fund, and (vii) in any court of record in which electronic devices are used for the purpose of recording testimony, a sum not to exceed twenty dollars for each day or part of a day of the trial to be paid by the clerk into a special fund to be used for the purpose of repairing, replacing or supplementing such electronic devices, or if a sufficient amount is available, to pay the purchase price of such devices in whole or in part. For the purpose of this subdivision, repairing shall include maintenance or service contracts.

(16) Upon conviction in misdemeanor cases, the clerk shall charge the defendant twenty-five dollars in each case. Sums shall be collected for the benefit of and paid to the Virginia Crime Victim-Witness Fund as provided for in § 19.2-11.3 irrespective of whether the defendant was convicted of a misdemeanor chargeable under the Code of Virginia or pursuant to a local ordinance.

In addition, in each case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess (i) a fee of fifty dollars for each misdemeanor conviction and (ii) a fee of $100 per case for any forensic laboratory analysis performed for use in prosecution of such violation. Such fees shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury.

In addition, for each misdemeanor case the clerk shall collect and tax as costs (i) the fees of the attorneys for the Commonwealth as provided for in § 14.1-121, (ii) the compensation of court-appointed counsel as provided in § 19.2-163, (iii) the fees of the public defenders as provided for in § 19.2-163.2, (iv) the additional costs imposed under § 19.2-368.18 to be deposited into the Criminal Injuries Compensation Fund, and (v) in any court in which electronic devices are used for the purpose of recording testimony, a sum not to exceed five dollars for each day or part of a day of the trial to be paid by the clerk into a special fund to be used for the purpose of repairing, replacing or supplementing such electronic devices, or if a sufficient amount is available, to pay the purchase price of such devices in whole or in part. For the purpose of this subdivision, repairing shall include maintenance or service contracts.

(16a) Upon the defendant's being required to successfully complete traffic school or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

(17) In all actions at law the clerk's fee chargeable to the plaintiff shall be fifty dollars in cases not exceeding $50,000, $100 in cases not exceeding $100,000, and $150 in cases exceeding $100,000; and in condemnation cases, a fee of twenty-five dollars, to be paid by the plaintiff at the time of instituting the action, this fee to be in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

(17a) In addition to the fees chargeable in actions at law, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail, (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the

amount of the confessed judgment, (iii) for the sheriff for serving each copy of the order entering judgment, one dollar and twenty-five cents, and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision (22) of this section.

(18) [Repealed.]

(19) For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, ten dollars.

(20) For each habeas corpus proceeding, the clerk shall receive ten dollars for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

(21) [Repealed.]

(22) For docketing and indexing a judgment from any other court of this Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of five dollars; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of five dollars; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of twenty dollars.

(23) For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge ten dollars, to be paid by the party filing said papers at the time of filing.

(24) For receiving and processing an application for a tax deed, ten dollars.

(25) For all services rendered by the clerk in any condemnation proceeding instituted by the Commonwealth, twenty-five dollars.

(26), (27) [Repealed.]

(28) For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, one dollar.

(29) For all services rendered by the clerk in any proceeding pursuant to § 57-8 or § 57-15, ten dollars.

(30) For preparation and issuance of a subpoena duces tecum or a summons for interrogation by an execution creditor, five dollars.

(31) For all services rendered by the clerk in matters filed in circuit court under § 8.01-217 relating to change of name, twenty dollars; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

(32) For providing court records or documents on microfilm, per frame, ten cents.

(33) In all chancery cases, the clerk's fee chargeable to the plaintiff shall be fifty dollars to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. However, no fee shall be charged for the filing of a cross-bill in any pending suit. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

(34) For the acceptance of credit cards in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs in accordance with § 19.2-353.3, the clerk shall collect a service charge of four percent of the amount paid.

(35) For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of twenty dollars or ten percent of the amount to be paid, whichever is greater, in accordance with § 19.2-353.3.

(36) For all services rendered in an adoption proceeding, a fee of twenty dollars, in addition to the fee imposed under § 63.1-236.1, to be paid by the petitioner or petitioners.

(37) For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

(38) For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of five dollars to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

(39) For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, a fee of twenty dollars.

(40) For issuance of hunting and trapping permits in accordance with § 10.1-1154, twenty-five cents.

(41) For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees shall be as prescribed in that Act.

(42) [Repealed.]

(43) For filing the appointment of a resident agent for a nonresident property owner in accordance

with § 55-218.1, a fee of one dollar.

(44) For filing power of attorney for service of process, or resignation or revocation thereof, in accordance with § 59.1-71, a fee of twenty-five cents.

(45) For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of ten dollars.

(46) For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

(47) For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of two dollars.

(48) For filing a financing statement in accordance with § 8.9-403, the fee shall be as prescribed under that section.

(49) For filing a termination statement in accordance with § 8.9-404, the fee shall be as prescribed under that section.

(50) For filing assignment of security interest in accordance with § 8.9-405, the fee shall be as prescribed under that section.

(51) For filing a petition as provided in §§ 37.1-134.7 and 37.1-134.17, the fee shall be ten dollars.

In accordance with § 14.1-133.2, the clerk shall collect fees under subdivisions (8), (15), (16), (17), (20), (23) if applicable, (25), (29), (31), (33), (36), and (38) to be designated for courthouse construction, renovation or maintenance.

In accordance with § 14.1-125.1, the clerk shall collect fees under subdivisions (8), (17), (20), (23) if applicable, (25), (29), (31), (33), (36), and (38) to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

In accordance with § 14.1-133.3, the clerk shall collect fees under subdivisions (15) and (16) to be designated for the Intensified Drug Enforcement Jurisdiction Fund.

In accordance with § 42.1-70, the clerk shall collect fees under subdivisions (8), (17), (20), (23) if applicable, (25), (29), (31), (33), (36), and (38) to be designated for public law libraries.

The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind, or (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, blackjack, or (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to:

1. Any person while in his own place of abode or the curtilage thereof;

2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;

3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from

those conditions; and

8. Any State Police officer retired from the Department of State Police following at least fifteen years of service, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed weapon issued by the Superintendent of State Police.

C. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. [Repealed.]

4. Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed weapon without obtaining a permit as provided in subsection D hereof: (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; (d) commissioners in chancery;

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29;

6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

8. Harbormaster of the City of Hopewell.

D. Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides for a two-year permit to carry a concealed handgun. The application shall be made under oath before a notary or other person qualified to take oaths and shall be made on a form prescribed by the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court, after consulting the law-enforcement authorities of the county or city and receiving a report from the Central Criminal Records Exchange, shall issue the permit within forty-five days of receipt of the completed application unless it appears that the applicant is disqualified, except that any permit issued prior to July 1, 1996, shall be issued within ninety days of receipt of the completed application.

E. The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to *former* § 37.1-134.1 *or § 37.1-134.16* less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the three-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance or of public drunkenness within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the Armed Forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff, chief of police or the attorney for the Commonwealth, that in the opinion of such sheriff, chief of police or the attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to

endanger others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based upon personal knowledge or upon the sworn written statement of a competent person having personal knowledge.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within sixteen years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

F. The making of a materially false statement in an application under this section shall constitute perjury, punishable as provided in § 18.2-434.

G. The court may further require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following:

1. Completing any hunter education or hunter safety course approved by the Department of Game and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor; or

8. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify the name, address, date of birth, gender, social security number, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed weapons permit shall be issued, upon application, a new two-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application and request of the applicant made within ten days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun to the court. Any person permitted to carry a concealed weapon under this section, who is under the influence

of alcohol or illegal drugs while carrying such weapon in a public place, shall be guilty of a Class 1 misdemeanor.

J1. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have such permit suspended by such court before which such charge is pending.

J2. No person shall carry a concealed handgun into any place of business or special event for which a license to sell or serve alcoholic beverages on premises has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; provided nothing herein shall prohibit any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such place of business or at such special event if such person has a concealed handgun permit.

K. No fee shall be charged for the issuance of such permit to a person who has retired from service as a magistrate in the Commonwealth or as a law-enforcement officer with the Department of State Police, or with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth of Virginia, after completing twenty years' service or after reaching age fifty-five nor to any person who has retired after completing twenty years' service or after reaching age fifty-five from service as a law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration or Naval Criminal Investigative Service. The clerk shall charge a fee of ten dollars for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agencies may charge a fee not to exceed thirty-five dollars to cover the cost of conducting an investigation pursuant to this section. The State Police may charge a fee not to exceed five dollars to cover their costs associated with processing the application. The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed weapon under the provisions of this section may, within thirty days of the final decision, present a petition for review to the Court of Appeals or any judge thereof. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of § 17-116.07 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made and intended to fire a projectile by means of an explosion from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

N. As used in this article:

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add or delete from that provision.

§ 18.2-308.1:2. Purchase, possession or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated; penalty.

A. It shall be unlawful for any person who has been adjudicated *(i)* legally incompetent pursuant to *former* § 37.1-128.02 or *former* § 37.1-134 ~~or~~*, (ii)* mentally incapacitated pursuant to *former* § 37.1-128.1 or *former* § 37.1-132 *or (iii) incapacitated pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1* and whose competency or capacity has not been restored pursuant to *former* § 37.1-134.1 *or § 37.1-134.16*, to purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any firearm possessed or transported in violation of this section shall be forfeited to the

Commonwealth and disposed of as provided in § 18.2-310.

§ 24.2-232. Vacancy occurring when officer determined incapacitated.

The office of any person who is determined to be ~~mentally~~ ~~incompetent~~ *incapacitated* in a judicial proceeding as provided for in Article ~~1~~ ~~(§ 37.1-128.01 et seq.)~~ *1.1 (§ 37.1-134.6 et seq.)* of Chapter 4 of Title 37.1, shall become vacant and the vacancy filled in the manner provided by law. Notwithstanding the provisions of Article ~~1~~ ~~(§ 37.1-128.01 et seq.)~~ *1.1 (§ 37.1-134.6 et seq.)* of Chapter 4 of Title 37.1, however, any officer shall have a jury trial unless it is waived by him or for him by his counsel of record.

§ 26-6. How judgment may be entered against personal representative, conservator or committee.

A judgment or decree against any person, as the personal representative of a decedent or committee of a convict ~~or an insane person~~, or *conservator* of ~~a~~ *an incapacitated* person ~~adjudged incapable of caring for his person or property, in accordance with the provisions of § 37.1-132, or incompetent under provisions of § 37.1-134~~ *as defined in § 37.1-134.6*, or ~~of~~ *pursuant to* any provision of law now or hereafter enacted under which a *conservator or* committee may be appointed, for a debt due from such decedent, convict, ~~or insane person,~~ or ~~from any~~ *incapacitated* person ~~adjudged incompetent under provisions of § 37.1-132, or § 37.1-134, or any other statute for appointment of a committee now or hereafter enacted,~~ may, without taking an account of the transactions of such representative, *conservator* or committee, be entered to be paid out of the ~~personal~~ estate of such decedent, convict, ~~insane person~~ or ~~other incompetent~~ *incapacitated person* in, or which shall come to, the hands of the representative, *conservator* or committee to be administered. When the court enters of record that if the fiduciary had prudently discharged his duty, the proceeding would not have been brought, the judgment or decree, so far as it is for costs, shall be entered to be paid out of his own estate.

§ 26-17.4. Conservators, committees, trustees under § 37.1-134.20 and receivers under § 55-44.

A. Within six months from the date of the qualification, ~~guardians, curators~~ *conservators*, committees, trustees under ~~§ 37.1-134~~ *§ 37.1-134.20* and receivers under § 55-44 shall exhibit before the commissioner of accounts a statement of all money and other property which such fiduciary has received, or become chargeable with, or has disbursed within four months from the date of qualification.

B. After the first account of the fiduciary has been filed and settled, the second and subsequent accounts for each succeeding twelve-month period will be due within four months from the last day of the twelve-month period commencing on the terminal date of the preceding account unless the commissioner of accounts extends the period for filing upon reasonable cause.

§ 26-30. Expenses and commissions allowed fiduciaries.

The commissioner, in stating and settling the account, shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation, in the form of a commission on receipts, or otherwise. *Unless otherwise provided by the court, any guardian appointed pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1 shall also be allowed reasonable compensation for his services.* If a ~~guardian,~~ committee or other fiduciary renders services with regard to real estate owned by the ward or beneficiary, compensation may also be allowed for the services rendered with regard to the real estate and the income therefrom or the value thereof.

§ 26-50. Notice required; certain substitutions validated.

A motion under § 26-48 shall be after reasonable notice to all persons interested in the execution of the trust other than the plaintiff in such motion, and, if any of the parties on whom such notice is required to be served ~~be~~ *is* under eighteen years of age, the court or clerk shall appoint some discreet and competent attorney at law as guardian ad litem to such infant defendant, on whom notice may be served. If any such party is ~~insane~~ *incapacitated* or a convict, the notice shall be served on his committee, *guardian or conservator,* if any, but if none, a guardian ad litem shall be appointed for him in the manner hereinbefore provided for the appointment of a guardian ad litem for an infant. No notice need be given to a trustee or, if one has previously been appointed, to a substituted trustee who has removed from the Commonwealth, declined to accept the trust, or has resigned, nor to the personal representatives of one who is dead, or, if the trustee or substituted trustee~~, as the case may be, be~~ *is* a corporation which has been adjudicated a bankrupt or whose charter then stands revoked, no notice need be given to such corporation.

In the case of the substitution of the trustee or trustees in a deed of trust securing the payment of indebtedness it shall be necessary to give notice of the motion only to the trustee or, if one has previously been appointed, to the substituted trustee~~,~~(unless notice to him is dispensed with under the foregoing provisions)~~, the~~*; any* beneficiaries appearing of record~~, if any,~~ or known to the plaintiff, if any~~, the debtor or~~*; any* debtors mentioned in the deed of trust~~, if any, the person or~~*; any* persons~~, if any,~~ who may be shown by the deed records to have assumed payment of the indebtedness in whole or in part~~,~~*;* and the person or persons in whom the equitable title to the property conveyed by the deed of trust is vested at the time of the motion as shown by the records. In such case when the *written* notice

of motion ~~in writing shall have~~ *has* been filed in the clerk's office of the court having jurisdiction as defined in § 26-48, service of such notice as to all parties mentioned in § 8.01-316 may be made in conformity with the provisions of §§ 8.01-316 through 8.01-318, 8.01-320, 8.01-322 and 8.01-323.

Any such decree or order of substitution heretofore made by a court of competent jurisdiction is hereby validated.

Nothing herein contained shall be construed as preventing a court of equity from substituting a trustee in a suit instituted for that purpose.

§ 26-59. Nonresident fiduciaries.

A. A natural person, not a resident of this Commonwealth, may be appointed or allowed to qualify or act as personal representative, or trustee under a will, of any decedent, or appointed as guardian of an infant's estate, or guardian ~~of the person~~ or *conservator of the* property of an incapacitated person under ~~§ 37.1-132 or committee of any person non compos mentis~~ *Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1*.

Qualification of such person as a personal representative, or trustee under a will of any decedent shall be subject to the provisions of Article 1 (§ 64.1-116 et seq.) of Chapter 6 of Title 64.1.

At the time of qualification or appointment each such person shall file with the clerk of the circuit court of the jurisdiction wherein such qualification is had or appointment is made, his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, *conservator* or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in this Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of this Commonwealth and at such address as he may appoint in the written instrument. In the event of the death, removal, resignation or absence from this Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of such circuit court. Notwithstanding §§ ~~37.1-135~~ *37.1-134.15* and 64.1-121, where any nonresident qualifies, *other than as a guardian*, pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal representative, trustee, or fiduciary qualifies at the same time or the court making the appointment waives surety under the provisions of § 26-4.

B. No corporation shall be appointed or allowed to qualify or act as personal representative, or trustee under a will, or as one of the personal representatives or trustees under a will, of any decedent, or appointed or allowed to qualify or act as guardian of an infant, or as one of the guardians of an infant, or guardian of the person or property of an incapacitated person under ~~§ 37.1-132~~ *Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1*, or as one of ~~the~~ *such* guardians ~~of the person~~ or ~~property of an incapacitated person under § 37.1-132, or as committee of any person non compos mentis, or as one of the committees of a person non compos mentis~~ *conservators*,, unless such corporation is authorized to do business in this Commonwealth. Nothing in this section shall be construed to impair the validity of any appointment or qualification made prior to January 1, 1962, nor to affect in any way the other provisions of this chapter or of § 64.1-130. The provisions of this section shall not authorize or allow any appointment or qualifications prohibited by § 6.1-5.

C. The fact that an individual nominated or appointed as the guardian of the person of an infant is not a resident of this Commonwealth shall not prevent the qualification of the individual to serve as the sole guardian of the person of the infant.

§ 37.1-67.3. Same; involuntary admission and treatment.

The commitment hearing shall be held within forty-eight hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday, or legal holiday, but in no event may the person be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.

The judge, in commencing the commitment hearing, shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the person is capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept voluntary admission for a minimum period of treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the requirement for prescreening by a community services board or community mental health clinic as

provided in § 37.1-65.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

A written explanation of the involuntary commitment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the commitment hearing. The written explanation shall include, at a minimum, an explanation of the person's right to retain private counsel or be represented by a court-appointed attorney, to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing and testify, to appeal any certification for involuntary admission to the circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

To the extent possible, during or before the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, the community services board staff, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing and the person whose admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist or a psychologist who is licensed in Virginia by either the Board of Medicine or the Board of Psychology who is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, any mental health professional who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of the person. The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the admission or treatment of the person, shall have no investment interest in the hospital detaining or admitting the person under this article, and, except for employees of state hospitals and of the U.S. Department of Veterans Affairs, shall not be employed by such hospital. For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that the individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection sustained to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.

Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The report shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically *(i)* that the person ~~(i)~~ presents an imminent danger to himself or others as a result of mental illness~~,~~ or ~~(ii)~~ has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and ~~(iii)~~ *(ii)* that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be placed in a hospital or other facility for a period of treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital or other facility designated by the community services board which serves the political subdivision in which the person was examined as provided in this section. If the community services board does not provide a placement recommendation at the commitment hearing, the person shall be placed in a hospital or other facility designated by the Commissioner.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically *(i)* that the person ~~(i)~~ presents an imminent danger to himself or others as a result of mental illness~~,~~ or ~~(ii)~~ has been proven to be so seriously mentally ill as to be substantially unable to care for himself~~,~~ and ~~(iii)~~ *(ii)* that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, and if, moreover, the judge finds specifically that (i) the patient has the degree of competency necessary to understand the stipulations of his treatment, (ii) the patient expresses an interest in living in the community and agrees to abide by his treatment plan, (iii) the patient is deemed to have the capacity to comply with the treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and (v) the ordered treatment can be monitored by the community services board or designated providers, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § ~~37.1-134.5~~ *37.1-134.21*, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section.

The judge shall make or cause to be made a tape or other audio recording of the hearing and shall submit such recording to the appropriate district court clerk to be retained in a confidential file. Such recordings shall only be used to document and to answer questions concerning the judge's conduct of the hearing. These recordings shall be retained for at least three years from the date of the relevant commitment hearing. The judge shall also order that copies of the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearings provided for in this section confidential if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board which serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2.

§ 37.1-89. Fees and expenses.

Any special justice as defined in § 37.1-88 and any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.1-67.1 through 37.1-67.4 shall receive a fee of fifty-seven dollars and fifty cents for each commitment hearing and his necessary mileage. Any special justice and any district court substitute judge who presides over a hearing shall receive a fee of twenty-eight dollars and seventy-five cents for each certification hearing and each order under § ~~37.1-134.5~~ *37.1-134.21*

ruling on competency or treatment and his necessary mileage. Every physician, psychologist, or other mental health professional, or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth of Virginia who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing in which he serves. Every physician, clinical psychologist or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth and who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of twenty-five dollars and necessary expenses for each certification hearing in which he serves. Other witnesses regularly summoned before a judge under the provisions of this chapter shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. Every attorney appointed under § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing. Every attorney appointed shall receive a fee of twenty-five dollars and his necessary expenses for each certification hearing and each proceeding under § ~~37.1-134.5~~ *37.1-134.21*. Except as hereinafter provided, all expenses incurred, including the fees, attendance and mileage aforesaid, shall be paid by the Commonwealth. Any such fees, costs and expenses incurred in connection with an examination or hearing for an admission pursuant to § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 in carrying out the provisions of this chapter or in connection with a proceeding under § ~~37.1-134.5~~ *37.1-134.21*, when paid by the Commonwealth, shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing or proceeding, or from his estate. Such collection or recovery may be undertaken by the Department. All such fees, costs and expenses, if collected or recovered by the Department, shall be refunded to the Commonwealth. No such fees or costs shall be recovered, however, from the person who is the subject of the examination or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

§ 37.1-109. Assessments and contracts by Department.

The Department may assess or contract with any patient, patient's parent, guardian, *conservator*, trustee, committee, or the person legally liable for his support and maintenance, and in arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the patient, his present and future needs and the present and future needs of his lawful dependents, and, whenever deemed necessary, to protect him or his dependents, may assess or agree to accept a monthly sum for his maintenance less than the actual per capita cost of his maintenance; provided, however, that the estate of such patient other than income shall not be depleted below the sum of $500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per capita cost of care, treatment, and maintenance and the financial condition and estate of any patient, his present and future needs and the present and future needs of his lawful dependents and entering into a new agreement with the patient, patient's parent, guardian, *conservator*, trustee, ~~committee,~~ or the person liable for his support and maintenance, increasing or decreasing the sum to be paid for the patient's care, treatment, and maintenance.

All contracts made by and between the Department and any person acting in a fiduciary capacity for any patient adjudicated to be ~~legally incompetent because of mental illness or mental retardation~~ *incapacitated* under the provisions of ~~Chapter~~ 4 *Article 1.1* (§ ~~37.1-128.01~~ *37.1-134.6* et seq.) *of Chapter 4* of this title and all assessments made by the Department upon such patients or their fiduciaries, providing for payment of the expenses of such patient in any state hospital, shall be subject to the approval of any court of record having jurisdiction over the ~~incompetent's~~ *incapacitated person's* estate or for the county or city of which he is a legal resident or from which he was admitted to said hospital.

Article 1.1.

Guardianship and Conservatorship.

§ 37.1-134.6. Definitions.

As used in this chapter, unless a different meaning is clearly required by the context:

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person, and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator."

"Estate" includes both real and personal property.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and if not inconsistent with an order of commitment, regarding the person's residence. Where the context plainly indicates, the term includes a

"limited guardian" or a "temporary guardian."

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this subsection.

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

§ 37.1-134.7. Filing of petition; jurisdiction; fees.

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital or a resident in a nursing facility or nursing home, convalescent home, state hospital for the mentally ill, adult care residence as defined in § 63.1-172 or any other similar institution; or if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

C. The petitioner shall pay the filing fee as provided in § 14.1-112 (51) and costs. Service fees and courts costs may be waived by the court if it is alleged under oath that the estate of the respondent is unavailable or insufficient. If a guardian or conservator is appointed and the estate of the incapacitated person is available and sufficient therefor, the court shall order that the petitioner be reimbursed from the estate for all costs and fees.

§ 37.1-134.8. Who may file petition; contents.

A. Any person may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent, and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, social security number, and post office address.

2. The names and post office addresses of the respondent's spouse, adult children, parents and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order.

3. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody.

4. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, or any guardian, committee or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such documents, if available.

5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity; when the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangement and treatment plan; if the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment, and if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment.

6. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent, and that person's relationship to the respondent.

7. The native language of the respondent and any necessary alternative mode of communication.

8. A statement of the financial resources of the respondent which shall, to the extent known, list the

approximate value of the respondent's property and the respondent's anticipated annual gross income and other receipts, and debts.

9. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care or safety.

10. A request for appointment of a guardian ad litem.

§ 37.1-134.9. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid such fee as is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include: (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 34.1-134.12 and 34.1-134.13, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel should be appointed for the respondent, pursuant to § 37.1-134.12, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.

C. In the report required by subsection B (iv), the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator, e.g., personal supervision, financial management, medical consent only; (iv) the propriety and suitability of the person selected as guardian or conservator, after consideration of geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond; if any; and (vi) consideration of proper residential placement of the respondent.

§ 37.1-134.10. Notice of hearing; jurisdictional.

A. Upon the filing of the petition, the court shall promptly set a date, time and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.

B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to § 34.1-137.9.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first class mail by the petitioner, at least seven days before the hearing, to all adult individuals and to all entities whose names and post office addresses appear in the petition. For good cause shown, the court may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail, by first class mail, a copy of the petition and any order entered to those individuals and entities.

D. The notice to the respondent shall include a brief statement in at least fourteen-point type of the purpose of the proceedings, and shall inform the respondent of the right to be represented by counsel pursuant to § 37.1-134.12 and to a hearing pursuant to § 37.1-134.13. Additionally, the notice shall include the following statement in conspicuous, bold print:

WARNING

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

E. The petitioner shall file with the clerk of the circuit court a statement of compliance with subsections B, C and D.

§ 37.1-134.11. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian ad litem, or may order a report and delay the hearing until the report is prepared, filed and provided to the guardian ad litem.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type and extent of the respondent's incapacity, including the

respondent's specific functional impairments;

2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior and social skills and a prognosis for improvement;

3. The date or dates of the examinations, evaluations and assessments upon which the report is based; and

4. The signature of the person conducting the evaluation and the nature of the professional license held by such person.

C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

D. A report prepared pursuant to this section shall be admissible as evidence of the facts stated therein and the results of the examination or evaluation referred to therein unless counsel for the respondent or the guardian ad litem objects.

§ 37.1-134.12. Counsel for respondent.

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel, upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem if the court determines that counsel is needed to protect the respondent's interest. Counsel appointed by the court shall be paid such fee as is fixed by the court to be taxed as part of the costs of the proceeding.

§ 37.1-134.13. Hearing on petition to appoint.

The respondent is entitled to a jury trial, upon request, and may compel the attendance of witnesses, present evidence on his own behalf and confront and cross-examine witnesses.

The court or, if one is requested, the jury shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

In determining the need for a guardian or a conservator, and the powers and duties of any needed guardian or conservator, consideration shall be given to the following factors: the limitations of the respondent; the development of the respondent's maximum self-reliance and independence; the availability of less restrictive alternatives including advance directives and durable powers of attorney; the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; the actions needed to be taken by the guardian or conservator; and the suitability of the proposed guardian or conservator.

If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person to be the guardian or the conservator, or both, giving due deference to the wishes of the respondent.

The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.

§ 37.1-134.14. Court order of appointment; limited guardianships and conservatorships.

The court's order appointing a guardian or conservator shall: (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself or herself and manage property to the extent he or she is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity; (v) include any limitations deemed appropriate following consideration of the factors specified in § 37.1-134.13; and (vi) set the bond of the guardian, and the bond and surety, if any, of the conservator.

The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care, for the limited purpose of medical decision-making, decisions about place of residency, or other specific decisions regarding his personal affairs.

A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of

Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision-making outside the purview of the advance directive.

The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs, for limited purposes specified in the order.

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to § 37.1-134.22 that the agent is not acting in the best interests of the principal or there is a need for decision-making outside the purview of the durable power of attorney, or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

§ 37.1-134.15. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

A guardian or conservator appointed in the court order shall qualify before the clerk upon the following:

1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;

2. Posting of bond, but no surety shall be required on the bond of the guardian, and the conservator's bond may be with or without surety, as ordered by the court; and

3. Acceptance in writing by the guardian or conservator of any educational materials provided by the court.

Upon qualification the clerk shall issue to the guardian or conservator a certificate, with a copy of the order appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction in which the respondent owns real property. If the order appoints a guardian the clerk shall promptly forward a copy of the order to the local department of social services in the jurisdiction where the respondent resides.

A conservator shall have all powers granted pursuant to § 37.1-137.3 as are necessary and proper for the performance of his duties in accordance with this chapter, subject to such limitations as are prescribed in the order. The powers granted to a guardian include only those powers enumerated in the court order.

Any individual or entity conducting business in good faith with a guardian or conservator who presents a currently effective certificate of qualification, may presume that the guardian or conservator is properly authorized to act as to any matter or transaction except to the extent of any limitations upon the fiduciary's powers contained in the court's order of appointment.

§ 37.1-134.16. Petition for restoration, modification or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator or any other person, or upon motion of the court, the court may declare the incapacitated person restored to capacity, modify the type of appointment or the areas of protection, management or assistance previously granted or require a new bond, terminate the guardianship or conservatorship, order removal of the guardian or conservator as provided in § 26-3 or order other appropriate relief. The fee for filing the petition shall be as provided in § 14.1-112 (51).

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § 37.1-134.10. The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person as alleged in the petition to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court, and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § 37.1-134.10 and any other person or entity as the court may require, the court shall hold a hearing.

C. Revocation, modification or termination may be ordered upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;

2. The extent of protection, management or assistance previously granted is either excessive or insufficient considering the current need therefor;

3. The incapacitated person's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant such action; or

4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.

D. If, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has, in the case of a guardianship, substantially regained his ability to care for his person or, in the case of a conservatorship, to manage and handle his estate, it shall declare the person restored to capacity and discharge the guardian or conservator.

In the case of a petition for modification of a guardianship or conservatorship, if the court finds by a preponderance of the evidence that it is in the best interests of the incapacitated person to limit or reduce the powers of the guardian or conservator, it shall so order; if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to increase or expand the powers of the guardian or conservator, it shall so order.

The court may order a new bond or other appropriate relief upon finding by a preponderance of the evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or of the estate.

E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship.

A guardianship or conservatorship shall terminate upon the death of the incapacitated person, or if ordered by the court following a hearing on the petition of any interested person.

F. The court may allow reasonable compensation from the estate of the incapacitated person to any guardian ad litem, attorney or evaluator appointed pursuant to this section. Any compensation allowed shall be taxed as costs of the proceeding.

§ 37.1-134.17. Standby guardianship or conservatorship for incapacitated persons.

On petition of one or both parents or the legal guardian of an incapacitated child made to the circuit court in which such parent, parents or legal guardian resides, the court may appoint a standby guardian of the person or a standby conservator of the property, or both, of the incapacitated child. The appointment of the standby fiduciary shall be affirmed biennially by the parent, parents or legal guardian of the child and by the standby fiduciary prior to his assuming his position as fiduciary by filing with the court an affidavit which states that the appointee remains available and capable to fulfill his duties.

Such standby fiduciary shall without further proceedings be empowered to assume the duties of his office immediately upon the death or adjudication of incapacity of the last surviving of the parents of such incapacitated person or of his legal guardian, subject to confirmation of his appointment by the circuit court within sixty days following assumption of his duties. If the incapacitated person is eighteen years of age or older, the court, before confirming the appointment of the standby fiduciary, shall conduct a hearing pursuant to this article. The requirements of the court and the powers, duties and liabilities which pertain to guardians and conservators govern the confirmation of the standby fiduciary and shall apply to the standby fiduciary upon the assumption of his duties.

For the purposes of this section, the term "child of the petitioners" includes the child of biological parents, a relationship established by adoption, a relationship established pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, or a relationship established by a judicial proceeding which establishes parentage or orders legal guardianship. The term includes persons eighteen years of age and over.

§ 37.1-134.18. Clerk to index findings of incapacity or restoration; notice to Commissioner, Secretary of Board of Elections and CCRE.

A. A copy of the findings of the court, if the person is found to be incapacitated, or restored to capacity, shall be filed by the judge with the clerk of the court of the county or city in which deeds are admitted to record. The clerk shall properly index the same in the index to deed books by reference to the order book and page whereon such order is spread and shall immediately notify the Commissioner in accordance with § 37.1-147, and the Secretary of the State Board of Elections with such information as required by § 24.2-410. If a guardian is appointed or if a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article and any order of restoration of capacity under § 37.1-134.16. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2.

§ 37.1-134.19. When no guardian or conservator appointed within one month of adjudication.

If a person is not appointed guardian or conservator within one month from the adjudication, the court on motion of any interested person, may appoint a guardian or conservator or, until January 1, 1999, may commit the person and/or the estate of the incapacitated person to the sheriff of the county or city in which the respondent resides. If the estate is committed to the sheriff, he shall be conservator and he and the sureties on his official bond shall be bound for the faithful performance of the trust.

§ 37.1-134.20. Trustees for incapacitated ex-service persons and their beneficiaries.

Whenever any ex-service person of the United States, or beneficiary of any ex-service person is found to be incapacitated by the medical authorities of the Veterans' Administration, on motion of the Veterans' Administration or any person in interest, accompanied by a certificate of the Administrator of Veterans' Affairs or his duly authorized representative, certifying that such person has been rated incapacitated by the Veterans' Administration, and that the appointment of a trustee is a condition precedent to the payment of any moneys due such ex-service person or any beneficiary of such ex-service person, after reasonable notice to such person, the circuit court of the county or the city of which such ex-service person or beneficiary of such ex-service person is a legal resident, in lieu of appointing a conservator or finding him to be incapacitated, shall appoint a trustee for such ex-service person, or beneficiary of such ex-service person, where it appears to the court that a trustee is needed for the purpose of receiving and administering such benefits of pension, compensation or insurance as might be paid by the United States government. Upon his qualification such trustee, in addition to administering the funds payable through the Veterans' Administration, shall administer the entire estate of such ex-service person or beneficiary of such ex-service person regardless of the source from which it is derived, and in such administration shall have the same powers and duties and be subject to the same liabilities as are vested in or imposed upon a conservator pursuant to this chapter. Such trustee, in addition to such duties and obligations imposed upon him under his trust by the federal government, shall be subject to such state laws as are now in force or hereafter enacted applicable to the appointment and administration of conservators for incapacitated persons.

Any person for whom a trustee has been appointed under the provisions of this section may thereafter be adjudged restored to capacity by the court which appointed the trustee.

§ 37.1-134.21. Judicial authorization of treatment and detention of certain persons.

A. An appropriate circuit court, or judge as defined in § 37.1-1, may authorize on behalf of an adult person, in accordance with this section, a specific treatment or course of treatment for a mental or physical disorder, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, and (ii) the proposed treatment is in the best interest of the person.

B. For purposes of this section:

"Disorder" includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause.

"Incapable of making an informed decision" means unable to understand the nature, extent or probable consequences of a proposed treatment, or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to that treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

C. Any person may request authorization of a specific treatment, or course of treatment, for an adult person by filing a petition in the circuit court, or with a judge as defined in § 37.1-1, of the county or city in which the allegedly incapable person resides or is located, or in the county or city in which the proposed place of treatment is located. Upon filing such a petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.

D. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the allegedly incapable person at the hearing. However, such appointment shall not be required in the event that the person, or another interested person on behalf of the person, elects to retain private counsel at his own expense to represent the interests of the person at the hearing. If the allegedly incapable person is indigent, his counsel shall be paid by the Commonwealth as provided in § 37.1-89 from funds appropriated to reimburse expenses incurred in the involuntary mental commitment process. However, this provision shall not be construed to prohibit the direct payment of an attorney's fee either by the patient, or by an interested person on his behalf, which fee shall be subject to the review and approval of the court.

E. Following the appointment of an attorney pursuant to subsection D above, the court shall schedule an expedited hearing of the matter. The court shall notify the person who is the subject of the petition, his next of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling such a hearing, the court shall take into account the type and severity of the alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.

F. Notwithstanding the provisions of subsections C and E above regarding delivery or service of the petition and notice of the hearing to the next of kin of any person for whom consent to observation, testing or treatment is sought, if such person is a patient in any hospital at the time the petition is filed, the court, in its discretion, may dispense with the requirement of any notice to the next of kin.

G. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any other interested party. Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision for which authorization is sought and of alternatives to the proposed decision. The attorney shall make a reasonable effort to inform the person of this information and to ascertain the person's religious beliefs and basic values and the views and preferences of the person's next of kin.

H. Prior to authorizing treatment pursuant to this section, the court shall find:

1. That there is no legally authorized person available to give consent;

2. That the person who is the subject of the petition is incapable either of making an informed decision regarding a specific treatment or course of treatment or is physically or mentally incapable of communicating such a decision;

3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and

4. That the proposed treatment or course of treatment is in the best interest of the patient. However, the court shall not authorize a proposed treatment or course of treatment which is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values unless such treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

I. The court may not authorize the following under this section:

1. Nontherapeutic sterilization, abortion, or psychosurgery.

2. Admission to a mental retardation facility or a psychiatric hospital, as defined in § 37.1-1. However, the court may issue an order under this section authorizing a specific treatment or course of treatment of a person whose admission to such facility has been or is simultaneously being authorized under §§ 37.1-65, 37.1-65.1, 37.1-65.2, 37.1-65.3, or § 37.1-67.1, or of a person who is subject to an order of involuntary commitment previously or simultaneously issued under § 37.1-67.3.

3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed sixty days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary commitment, including outpatient involuntary commitment, previously or simultaneously issued under § 37.1-67.3 or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.

4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.

J. Any order authorizing treatment pursuant to subsection A shall describe the treatment or course of treatment authorized and may authorize generally such related examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. The order shall require the treating physician to review and document the appropriateness of the continued admission of antipsychotic medications not less frequently than every thirty days. Such order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of the authorized treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding the authorized treatment or related services which may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report, or upon the petition of any interested party, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.

K. Any order hereunder of a judge, or of a judge or magistrate under subsection M, may be appealed de novo within ten days to the circuit court for the jurisdiction where the order was entered, and any such order of a circuit court hereunder, either originally or on appeal, may be appealed within ten days to the Court of Appeals.

L. Any licensed health professional or licensed hospital providing treatment, testing or detention pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent it is based on lack of consent to such treatment, testing or detention. Any such professional or hospital providing, withholding or withdrawing treatment with the consent of

the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such treatment, and such denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed provision, withholding or withdrawal of treatment.

M. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder, or is incapable of communicating such a decision due to a physical or mental disorder, and that the medical standard of care calls for testing, observation or treatment of the disorder within the next twenty-four hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation or treatment. The detention may not be for a period exceeding twenty-four hours unless extended by the court as part of an order authorizing treatment under subsection A. If before completion of authorized testing, observation or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing or treatment. If before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify or terminate the order.

N. The provisions of § 37.1-89 relating to payment by the Commonwealth shall not apply to the cost of detention, testing or treatment under this section.

O. Nothing in this section shall be deemed to affect the right to use, and the authority conferred by, any other applicable statutory or regulatory procedure relating to consent, or to diminish any common law authority of a physician or other treatment provider to provide, withhold or withdraw services to a person unable to give or to communicate informed consent to those actions, with or without the consent of the person's relative, including but not limited to common law or other authority to provide treatment in an emergency situation; nor shall anything in this section be construed to affect the law defining the conditions under which consent shall be obtained for medical treatment, or the nature of the consent required.

§ 37.1-134.22. Discovery of information and records regarding actions of certain agents and attorneys-in-fact.

A. After having first made a request to an agent or attorney-in-fact for disclosure under § 11-9.6, any person interested in the welfare of a principal believed to be unable to properly attend to his affairs, may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under this chapter or (ii) terminating, suspending or limiting the authority of an attorney-in-fact or other agent, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken within the past two years from the date the request under § 11-9.6 was made pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1.

B. Such petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under this title, or, if a conservator or guardian has been appointed for the principal, in the court which made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal if no guardian or conservator has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the attorney-in-fact or agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce such further orders respecting discovery as would be proper in a civil action subject to such Rules, and may award expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 11-9.6, may, in its discretion upon finding that the failure to comply with the request for information was unreasonable, order the attorney-in-fact or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney's fees.

C. A "principal believed to be unable to properly attend to his affairs" means an individual believed

in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

A "person interested in the welfare of a principal" is any member of the principal's family; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or other writing described in § 11-9.1; and if none of these persons is reasonably available and willing to act, the adult protective services unit of the local social services board for the city or county where the principal resides or is located at the time of the request. A "member of the principal's family" is an adult parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, spouse or surviving spouse of the principal.

D. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the attorney-in-fact or other agent.

§ 37.1-137.1. Duties and powers of guardian.

A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person, unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

A guardian's duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend or otherwise modify a durable power of attorney, as provided by § 11-9.1. Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1- 2981 et seq.) and in accordance with the procedures of § 37.1-134.16, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but such modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known, and shall otherwise act in the ward's best interest and exercise reasonable care, diligence and prudence.

§ 37.1-137.2. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 26-17.4 with the local department of social services for the jurisdiction in which he was appointed. The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of five dollars. The local department shall forward the fee to the state treasurer. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 26-17.4.

B. The report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person;

2. A description of the person's living arrangements during the reported period;

3. The medical, educational, vocational, and other professional services provided to the person and the guardian's opinion as to the adequacy of the person's care;

4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;

5. A statement of whether the guardian agrees with the current treatment or habilitation plan;

6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and

7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify that the information contained in the report is true and correct to the best of his or her knowledge.

§ 37.1-137.3. General duties and liabilities of conservator.

A. At all times, the conservator shall exercise reasonable care, diligence, and prudence, and shall act in the best interest of the incapacitated person. To the extent known to him, a conservator shall consider the expressed desires and personal values of the incapacitated person.

B. Subject to any conditions or limitations set forth in the conservatorship order, the conservator shall take care of and preserve the estate of the incapacitated person and manage it to the best advantage. The conservator shall apply the income from the estate, or so much as may be necessary, to the payment of the debts of the incapacitated person, including payment of reasonable compensation to himself and to any guardian appointed, to the maintenance of such person and of his or her legal dependents, if any, and, to the extent that the income is not sufficient, shall so apply the corpus of the estate.

C. A conservator shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and his financial affairs. A conservator shall also consider the size of the estate the probable duration of the conservatorship, the incapacitated person's accustomed manner of living, other resources known to the conservator to be available, and the recommendations of the guardian.

D. A conservator stands in a fiduciary relationship to the incapacitated person for whom he was appointed conservator and may be held personally liable for a breach of any fiduciary duty. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate unless he reveals the representative capacity and identifies the estate in the contract. Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor. A successor conservator is not personally liable for the contracts or actions of a predecessor.

E. A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Title 26, specifically including the duty to account set forth in § 26-17.4.

§ 37.1-137.4. Management powers and duties of conservator.

A. A conservator, in managing the estate, shall have the following powers and the powers set forth in § 64.1-57 as of the date the conservator acts, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:

1. To ratify or reject a contract entered into by an incapacitated person;

2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, to a distributee's custodian under a Uniform Gifts or Transfers to Minors Act of any applicable jurisdiction, or by paying the sum to the guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator;

3. To maintain life, health, casualty and liability insurance for the benefit of the incapacitated person, or legal dependents;

4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person, or successors in interest;

5. To execute and deliver all instruments, and to take all other actions that will serve in the best interests of the incapacitated person;

6. To initiate a proceeding (i) to revoke a power of attorney under the provisions of § 11-9.1, (ii) to seek a divorce, or (iii) to make an augmented estate election under § 64.1-13; and

7. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as to such conservator shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank, for any purpose; to mortgage or pledge such portion of the incapacitated person's estate as may be required to secure such loan or loans; and, as maker or endorser, to renew existing loans.

B. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate, including but not limited to (i) increasing the amount of the conservator's bond, (ii) securing an appraisal of the real estate or interest , (iii) giving notice to interested parties as the court deems proper and (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian. If the court imposes any such requirements, the conservator shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the conservator's report, the commissioner shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by

the commissioner of accounts is filed with the court and confirmed as provided in §§ 26-33, 26-34 and 26-35.

§ 37.1-137.5. Estate planning.

A. In the order appointing a conservator entered pursuant to § 37.1-134.14 or in a separate proceeding brought on petition, the court may authorize a conservator to: (i) make gifts from income and principal not necessary for the incapacitated person's maintenance to those persons to whom the incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind; or (ii) disclaim property as provided in Chapter 8 (§ 64.1-188 et seq.) of Title 64.1. A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person if he were dead as of the date of the filing of the petition, or beneficiaries under any known will of the incapacitated person, the court in its discretion may authorize the hearing to proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients and proportions of any gifts of the estate and the advisability of any disclaimer after considering: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of such gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care and maintenance needs; (iv) the incapacitated person's estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts or disclaimers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (viii) such other factors as the court may deem relevant.

B. The conservator may make a gift, not to exceed $100 to each donee in a calendar year and not to exceed a total of $500 per calendar year from such income and principal, without the requirement of a court-appointed guardian ad litem, without the requirement of notification to the incapacitated person or to any person who would be an heir or distributee of the incapacitated person if he or she were dead or a beneficiary under any known will of the incapacitated person and without requiring a court hearing. Prior to the making of such a gift, the conservator must consider conditions (i) through (viii) as set forth in subsection A of this section and must also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where such transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325 and may also contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

§ 37.1-144. Surrender of ward's estate.

The fiduciary shall surrender the ward's estate or that portion for which he is accountable, to the ward if the ward is restored to ~~competence or~~ capacity, or

If the ward dies prior to such restoration, the fiduciary shall surrender the real estate to the ward's heirs or devisees, and the personal estate to his executors or administrators. If upon the death of the ward (i) the value of the personal estate in the custody of the fiduciary is $5,000 or less, (ii) a personal representative has not qualified within sixty days of the ward's death and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the ward's estate to the ward's surviving spouse, or if there is no surviving spouse, to the distributees of the ward or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the *fiduciary's* final accounting submitted to the Commissioner of Accounts.

~~Nothing in this section or in §§ 37.1-138 to 37.1-142 shall be construed as affecting in any way the provisions of § 37.1-145 relative to supplying comforts and luxuries for persons committed.~~

§ 46.2-400. Suspension of license of incapacitated person or person incompetent because of inebriety, or drug addiction; return of license; duty of clerk of court.

The Commissioner, on receipt of notice that any person has been legally adjudged to be *incapacitated* in accordance with ~~§ 37.1-128.02,~~ *Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1* or that a person discharged from an institution operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services is, in the opinion of the authorities of the institution, not competent because of mental illness, mental retardation, inebriety, or drug addiction to drive a motor vehicle with safety to persons or property, shall forthwith suspend his license; but he shall not suspend the license if the person has been adjudged competent by judicial order or decree.

In any case in which the person's license has been suspended prior to his discharge it shall not be returned to him unless the Commissioner is satisfied, after an examination such as is required of

applicants by § 46.2-325, that the person is competent to drive a motor vehicle with safety to persons and property.

The clerk of the court in which the adjudication is made shall forthwith send a certified copy or abstract of such adjudication to the Commissioner.

§ 54.1-2976. Sterilization operations for certain adults incapable of informed consent.

It shall be lawful for any physician licensed by the Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on a person eighteen years of age or older, who does not have the capacity to give informed consent to such an operation, when:

1. A petition has been filed in the circuit court of the county or city wherein the person resides by the person's parent or parents, guardian, spouse, or next friend requesting that the operation be performed;

2. The court has made the person a party defendant, served the person, the person's guardian, if any, the person's spouse, if any, and if there is no spouse, the person's parent with notice of the proceedings and appointed for the person an attorney-at-law to represent and protect the person's interests;

3. The court has determined that a full, reasonable, and comprehensible medical explanation as to the meaning, consequences, and risks of the sterilization operation to be performed and as to alternative methods of contraception has been given by the physician to the person upon whom the operation is to be performed, to the person's guardian, if any, to the person's spouse, if any, and, if there is no spouse, to the parent;

4. The court has determined (i) that the person has been ~~adjudicated incompetent in accordance with § 37.1-128.02, has previously been adjudicated incapacitated for the purposes of consenting to a sterilization operation in accordance with § 37.1-128.1 or has been adjudicated in the proceeding specified in this section to be incapacitated for the purposes of consenting to a sterilization operation in accordance with § 37.1-128.1,~~ *legally adjudged to be incapacitated in accordance with Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1* and (ii) that the person is unlikely to develop mentally to a sufficient degree to make an informed judgment about sterilization in the foreseeable future;

5. The court, to the greatest extent possible, has elicited and taken into account the views of the person concerning the sterilization, giving the views of the person such weight in its decision as the court deems appropriate;

6. The court has complied with the requirements of § 54.1-2977; and

7. The court has entered an order authorizing a qualified physician to perform the operation not earlier than thirty days after the date of the entry of the order, and thirty days have elapsed. The court order shall state the date on and after which the sterilization operation may be performed.

§ 58.1-3015. To whom property generally shall be taxed and by whom listed.

If property ~~be~~ *is* owned by a person sui juris, it shall be taxed to him.

If property ~~be~~ *is* owned by a minor, it shall be listed by and taxed to his guardian or trustee, if any he has; if he has no guardian or trustee, it shall be listed by and taxed to the person in possession.

If the property ~~be~~ *is* the estate of a deceased person, it shall be listed by the personal representative or person in possession and taxed to the estate of such deceased person.

If the property ~~be~~ *is* owned by ~~a mentally ill or incompetent~~ *an incapacitated* person *as that term is defined in § 37.1-134.6*, it shall be listed by and taxed to his ~~committee~~ *conservator or guardian*, if any; if none has been appointed, then such property shall be listed by and taxed to the person in possession.

If the property is held in trust for the benefit of another, it shall be listed by and taxed to the trustee, if there ~~be~~ *is* any in this Commonwealth, and if there ~~be~~ *is* no trustee in this Commonwealth, it shall be listed by and taxed to the beneficiary.

If the property belongs to a corporation or firm, it shall be listed by and taxed to the corporation or firm.

§ 63.1-55.6. Same; emergency order for protective services.

A. Upon petition by the local department of social services or public welfare to the circuit court, the court may issue an order authorizing the provision of protective services on an emergency basis to an adult after finding on the record, based on a greater weight of the evidence, that:

1. The adult is incapacitated; and

2. An emergency exists; and

3. The adult lacks the capacity to consent to receive protective services; and

4. The proposed order is substantially supported by the findings of the local department of social services or public welfare which has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering protective services the court shall consider the right of a person to rely on nonmedical remedial

treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No person may be committed to a mental health facility under this section.

3. Protective services may be provided through an appropriate court order only for a period of five days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

4. In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the person's welfare and authority to give consent for the person for the approved protective services until the expiration of the order.

5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of protective services; the nature of the emergency; the nature of the person's disability, if determinable; the proposed protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through 4 of this section; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

D. Written notice of the time, date and place for the hearing shall be given to the person, to his spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least twenty-four hours prior to the hearing for emergency intervention. The court may waive the twenty-four hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the person or others will result from the twenty-four hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.

E. Upon receipt of a petition for an emergency order for protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the person is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the person is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the person is not indigent, the cost of the proceeding shall be borne by such person. This hearing shall be held no earlier than twenty-four hours after the notice required in subsection D of this section has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the person for whom the emergency services were ordered has occurred.

G. Where protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need protective services after the renewal order provided in subdivision B 3 of this section has expired, the temporary guardian or the local department of social services or public welfare shall immediately petition the court to appoint a guardian pursuant to ~~§ 37.1-128.1 or § 37.1-132~~ *Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1*.

§ 63.1-107. Application for assistance.

Except as provided for in the state plan for medical assistance services pursuant to § 32.1-325, application for assistance shall be made to the local board and filed with the local superintendent of the county or city in which the applicant resides. The application shall be in writing on forms prescribed by the Commissioner and shall be signed by the applicant under penalty of perjury in accordance with § 63.1-107.1. Such application shall contain a statement of the amount of property, real and personal, in which the applicant has an interest and of all income which he may have at the time of the filing of the application and such other information as the Commissioner may require.

In the case of aid to families with dependent children, the application shall be made by the relative with whom the child is living and one application may be made for several children if they reside with the same person.

In the case of auxiliary grants, social services to the blind or visually handicapped, and general relief, if the condition of the potential recipient is such as to preclude his signing an application, the application may be made in his behalf by his guardian or ~~committee~~ *conservator*. If no guardian or ~~committee~~ *conservator* has been appointed for ~~such~~ *the* potential recipient, ~~such~~ *the* application may be made by any adult member of his family or other competent adult person having knowledge of the potential recipient's financial affairs, until such time as a guardian or ~~committee~~ *conservator* is appointed

by a court.

§ 65.2-525. Who may receive payment and receipt therefor.

A. Whenever payment of compensation is made to a surviving spouse for his use, or for his use and the use of a minor child or children, the written receipt thereof of such surviving spouse shall acquit the employer.

B. Whenever payment is made to any person eighteen years of age or over, the written receipt of such person shall acquit the employer. If a minor shall be entitled to receive a sum amounting to not more than $300 as compensation for injuries, or as a distributive share by virtue of this title, the parent or natural guardian upon whom such minor shall be dependent for support shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such minor duly appointed by proper court, and the release or discharge of such parent or natural guardian shall be a full and complete discharge of all claims or demands of such minor thereunder.

C. Whenever any payment of over $300 is due to a minor or to ~~a mentally incompetent adult~~ *an incapacitated person as defined in § 37.1-134.6*, the same shall be made to the guardian of the property of such minor or the ~~guardian or committee~~ *conservator* of such ~~mentally incompetent adult~~ *incapacitated adult* or, if there ~~be~~ *is* none, to some suitable person or corporation appointed by the circuit court as a trustee, and the receipt of such trustee shall acquit the employer.

2. That this act shall become effective January 1, 1998. The powers granted and duties imposed pursuant to this act shall apply prospectively to guardians and conservators appointed by court order entered on or after that date, or modified on or after that date if the court so directs, without regard to when the petition was filed. The procedures specified in this act governing proceedings for appointment of a guardian or conservator or termination or other modification of a guardianship or conservatorship shall apply on and after that date without regard to when the petition therefor was filed or the guardianship or conservatorship created.

3. That on or before January 1, 1998, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1. The standards shall take into consideration the following criteria: (i) license or permission to practice law in Virginia; (ii) current training in the roles, responsibilities and duties of guardian ad litem representation; (iii) knowledge of the fields of aging and disability, and available community resources; and (iv) demonstrated proficiency in this area of the law. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem based upon the standards, and shall make the names available to the courts. If no attorney on the list is reasonably available, a judge may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

4. That on or before January 1, 1998, the Virginia State Bar, upon consultation with the Virginia Bar Association, the Virginia Guardianship Association, the Office of the Executive Secretary of the Supreme Court, the Department of Social Services and the Virginia Commissioners of Accounts Association shall prepare and make available to the circuit court clerks educational materials to be used by persons involved in guardianship and conservatorship proceedings, including petitioners, guardians ad litem, attorneys, evaluators, guardians and conservators. The materials shall provide general information on how such proceedings are conducted, the duties imposed upon such persons during the proceedings, and the duties and liabilities imposed upon persons appointed as guardians or conservators.

5. That Article 1 (§§ 37.1-128.01 through 37.1-134.5) of Chapter 4 of Title 37.1 and §§ 37.1-135, 37.1-138, 37.1-142 and 37.1-145 of the Code of Virginia are repealed.